HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.8806 of 2005

Dated:07-12-2007

Between:

R.Sambamoorthy

..... Pe

AND

The Mandal Revenue Officer,
Malkajgiri Mandal, R.R.District.
And another.

..... Respc

Counsel for the petitioner : Sri K.Venumadhav

Counsel for Respondents : A.G.P. for Revenue

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.8806 of 2005

O R D E R:

This writ petition is filed for a writ of mandamus to declare the action of respondents 1 and 2 in threatening the petitioner to dispossess from land admeasuring Ac.0.07 gts., in survey No.264 of Alwal village and Mandal, Ranga Reddy district and keeping his representation dated 23.2.1995 sent for regularization of the petitioner's possession, pending as illegal and violative of Articles 14 and 21 of the Constitution of India.

The petitioner claims that he is in possession of Ac.0.07 gts., of land comprised in survey No.264 belonging to the Government since the year 1978, that in the month of February, 1995 the petitioner received notice from respondent No.1 wherein he was called upon to show cause why he shall not be evicted from the land and that on receipt of the same he filed an application on 23.2.1995 showing his readiness to purchase the said land. The petitioner also averred that in the said explanation he had mentioned that he has been cultivating the land since the year 1978 and that he is ready to pay the value of the land.

A counter affidavit has been filed by the Tahsildar, Malkajgiri Mandal, Ranga Reddy district wherein it is mentioned that the extent of 0.07 gts., in survey no.264 is classified as Sarkari and that there is no cultivation in the said land. It is further averred that there were about four rooms constructed by the petitioner on the said Government land and that the request of the petitioner was rejected vide office memo dated 17.3.2004.

Heard Sri K.Venumadhav, learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue.

It is not in dispute that the property in possession of the petitioner belongs to the Government. In February, 1995, respondent No.1 issued notice under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short "the Act") and the petitioner submitted his explanation on 23.2.1995 wherein he offered to purchase the land by paying the value of the land. So far, respondent No.1 has not passed any order under

Section 6 of the Act. Having initiated the proceedings it is not known why respondent No.1 has not passed orders for more than 12 years from the time of issuing notice under Section 7 of the Act. In the light of the averments contained in para-3 of the counter affidavit that the petitioner's application was rejected by proceedings dated 17.3.2004, I have asked the learned Assistant Government Pleader whether there is any proof of service of the said proceedings on the petitioner to which he fairly stated that except the dispatch endorsement on the file there is no proof. The petitioner in his reply affidavit denied knowledge and receipt of the said order of rejection. Since the petitioner is already in possession of the property evidently for a long time and respondent No.1 has not so far passed an order of eviction under Section 6 of the Act, I am of the view that the petitioner cannot be evicted without an order being passed in accordance with the provisions of Section 7 of the Act. Further, as there is no proof of service of order of rejection of the petitioner's request for sale of the land on market value, respondent No.1 is directed to serve a copy of the same on the petitioner.

In the result, the writ petition is disposed of. Till respondent No.1 passes an order under Section 6 of the Act, the petitioner shall not be dispossessed from the land in his occupation. In the event, an adverse order is passed against the petitioner, he is at liberty to avail the remedies that are available to him in law.

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C.V.NAGARJUNA REDDY,J

Date:07.12.2007
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